

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)	
)	
)	
Plaintiff,)	
)	Civil No. 99-CV-02496 (GK)
v.)	
PHILIP MORRIS USA, INC.,)	REDACTED FOR PUBLIC FILING
f/k/a PHILIP MORRIS INC., et al.,)	
)	
Defendants.)	

DEFENDANTS' WRITTEN DIRECT EXAMINATION OF
VICTOR LINDSLEY

SUBMITTED PURSUANT TO ORDER #471

[Part 1 of 3]

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I. PERSONAL BACKGROUND

Q: Mr. Lindsley, please state your name.

A: Victor Lindsley.

Q: By whom are you employed?

A: Lorillard Tobacco Company.

Q: What is your current position at Lorillard?

A: Senior Group Brand Director at Lorillard Tobacco Company.

Q: What are your responsibilities in that position?

A: I direct the Brand Marketing Team that develops and carries out the marketing plans for Newport cigarettes.

Q: How long have you worked for Lorillard?

A: Since 1981.

Q: What jobs have you had with Lorillard?

A: 1981-82. Out-of-home field representative, responsible for buying and evaluating billboard advertising.

1982-84. Assistant brand manager for Newport, assisting in the day-to-day execution of the Newport marketing plan and serving as liaison with our advertising agency.

1984-85. Associate Brand Manager for Newport, responsible for more significant projects than in my prior position, including assisting in the development of Newport's annual marketing plan.

1985-87. Brand Manager for Newport, responsible for the development of Newport's marketing plan.

1987-89. Brand Manager for Kent, True and Harley-Davidson. I had the same responsibility for these brands as I had had for Newport in my prior position.

1989-90. Senior Brand Manager. This was a promotion, but my responsibilities did not change.

1990-2001. Group Brand Director for Newport, Kent and True, responsible for directing the marketing plans and brand marketing teams for Lorillard's full-price brands. In

1 addition, from late 1998 until early 2002, I was involved with the implementation of
2 Lorillard's Youth Smoking Prevention Program.

3 2001-present. Senior Group Brand Director for Newport. I am currently responsible for
4 directing the brand marketing team that forms the marketing plans for Newport
5 cigarettes.

6 Q: Do you have knowledge and understanding of the history of Lorillard's brands and
7 an understanding of Lorillard's marketing of its cigarettes including the regulations and
8 company policies which govern the marketing of its cigarettes?

9 A: Yes.

10 Q: Have you ever been deposed in a Lorillard case?

11 A: Yes.

12 Q: In how many cases?

13 A: Including this one, 10 cases.

14 Q: Have you ever testified in a trial?

15 A: No. This is the first time.

16 II. LORILLARD'S CIGARETTE BRANDS

17 Q: How does Lorillard rank in size compared to the other major manufacturers?

18 A: Lorillard is the smallest of the large cigarette manufacturers, behind Philip Morris and
19 Reynolds American. Before R.J. Reynolds and Brown & Williamson merged, we were fourth.

20 Q: Referring you to JD-024279, which is the Maxwell Report from February 2004,
21 what were the market shares of the major companies in 2003?

22 A: Here are the market shares in 2003 for the four largest companies:

23 Philip Morris: 50.4%

24 R.J. Reynolds: 21.5%

25 Brown & Williamson: 10.5%

1 Lorillard: 9.3%

2 Q: Are the Maxwell Reports generally used and relied upon by persons in your
3 occupation?

4 A: Yes.

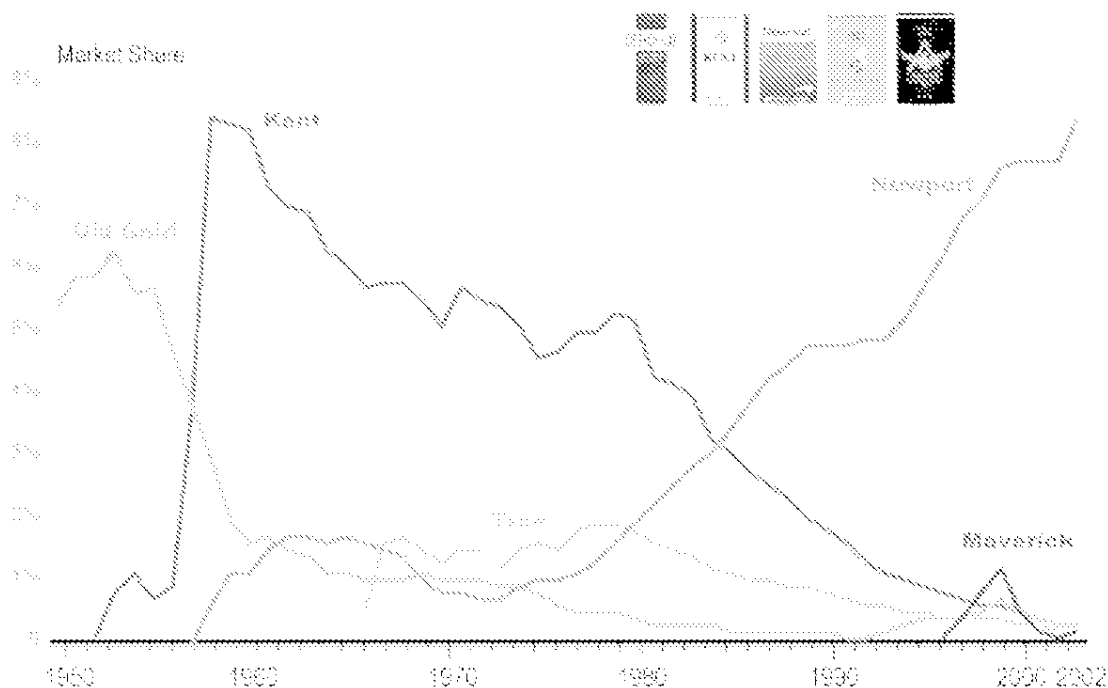
5 Q: What are Lorillard's brands currently?

6 A: Our major brand is Newport, with close to 90% of our sales. We also manufacture Kent,
7 Old Gold, True, Maverick, Max and Satin.

8 Q: Please look at JDEM-020174, which is copied on the next page and which contains
9 data from the Maxwell Reports since 1950; based on your experience at Lorillard, are that
10 graph and table of the market share of Lorillard and its major brands consistent with your
11 understanding?

12 A: Yes, they are.

Shaw-Woodward Hard Brands 1950-2002



1 Source: Forward Trends 1950-2002 JDEM-020174

	Kent	True	Newport	Old Gold	Maverick	Total Lor.
1950				5.3		5.5
1951				5.8		5.9
1952	0.1			5.9		6.2
1953	0.8			6.2		7.2
1954	1.1			5.5		6.7
1955	0.7			5.6		6.4
1956	0.9			4.6		5.4
1957	3.7			3.8		7.7
1958	8.3		0.6	2.9		11.9
1959	8.2		1.1	2.0		11.6
1960	8.1		1.1	1.6		11.0
1961	7.2		1.5	1.7		10.6
1962	6.9		1.7	1.5		10.9

	Kent	True	Newport	Old Gold	Maverick	Total Lor.
1977	4.9	1.8	1.1	0.5		8.8
1978	4.9	1.9	1.3	0.5		9.1
1979	5.2	1.9	1.6	0.5		9.7
1980	5.1	1.8	1.9	0.4		9.7
1981	4.5	1.6	2.2	0.3		9.2
1982	4.2	1.5	2.5	0.3		8.7
1983	3.9	1.4	2.8	0.3		9.2
1984	3.2	1.2	3.0	0.3		8.2
1985	3.0	1.1	3.4	0.2		8.1
1986	2.7	1.0	3.8	0.2		8.1
1987	2.5	1.0	4.2	0.2		8.2
1988	2.3	0.9	4.4	0.2		8.2
1989	2.0	0.9	4.7	0.2		8.0

	Kent	True	Newport	Old Gold	Maverick	Total Lor.
1963	6.8		1.7	1.4		10.4
1964	6.2		1.6	1.1		9.4
1965	6.0		1.7	1.1		9.2
1966	5.6	0.5	1.6	1.0		9.3
1967	5.7	1.6	1.5	1.0		10.0
1968	5.7	1.7	1.4	1.0		10.2
1969	5.4	1.5	1.0	1.1		9.1
1970	5.0	1.3	0.8	1.0		8.4
1971	5.6	1.5	0.8	1.0		9.1
1972	5.4	1.5	0.7	1.0		8.7
1973	5.3	1.2	0.7	0.9		8.4
1974	5.0	1.5	0.9	0.9		8.5
1975	4.5	1.6	1.0	0.8		8.2
1976	4.6	1.5	1.0	0.6		8.0

	Kent	True	Newport	Old Gold	Maverick	Total Lor.
1990	1.8	0.8	4.7	0.2		7.7
1991	1.6	0.7	4.7	0.1		7.3
1992	1.3	0.6	4.8	0.1		7.2
1993	1.1	0.6	4.8	0.2		7.1
1994	1.0	0.5	5.1	0.3		7.5
1995	0.9	0.5	5.6	0.4		8.0
1996	0.8	0.4	6.1	0.4		8.4
1997	0.7	0.4	6.7	0.4	0.4	8.8
1998	0.6	0.4	7.0	0.5	0.8	9.4
1999	0.6	0.4	7.5	0.7	1.2	10.4
2000	0.5	0.3	7.6	0.5	0.5	9.4
2001	0.4	0.3	7.6	0.4	0.2	8.9
2002	0.3	0.2	7.6	0.3	0.1	8.6
2003	0.3	0.2	8.3	0.2	0.2	9.2

1

2 A. Brief History of Newport

3 Q: What is Newport?

4 A: Newport is a menthol brand, with full flavor, medium and light offerings. We also offer
5 Newport Stripes, available in menthol and non-menthol, and Newport Slims.

6 Q: Where does Newport rank nationally among the other brands?

7 A: It currently ranks second in sales among all cigarette brands and first among menthol
8 cigarettes.

9 Q: Has Newport always been No. 2 among all cigarette brands?

10 A: Not at all. It didn't become No. 2 until the mid-1990's.

11 Q: In your work at Lorillard, have you learned about the history of Lorillard and its
12 brands from the time before you started with Lorillard?

13 A: Yes, I have learned some of that history.

14 Q: What is Newport's early history?

1 A: Newport was introduced in 1957 and rose incrementally, but, as shown in the graph
2 above, in 1966 it started a six-year, 50% decline in market share.

3 Q: What did Lorillard do about the decline?

4 A: In 1972, Lorillard reformulated the brand.

5 Q: How did it do that?

6 A: It modified Newport's taste to place its tobacco-menthol balance midway between the
7 leading menthols, Kool and Salem, re-designed the package, and introduced a new advertising
8 campaign based on a consumer communications platform of "Pleasure." The following year that
9 campaign took on the slogan, "Alive With Pleasure!" and the tagline, "After all, if smoking isn't
10 a pleasure, why bother?" Lorillard still uses this "Pleasure" theme today as its platform for
11 communicating to consumers. We currently use the slogan "Newport Pleasure!"

12 Q: What happened after the brand was overhauled?

13 A: Newport's sales slowly began to rebound, and its market share has climbed steadily ever
14 since. At least since I have been with the company, the market shares of Kool and Salem have
15 fallen.

16 B. Brief History of Lorillard's Other Brands

17 Q: Earlier you mentioned other brands of Lorillard's. How do these compare with
18 Newport?

19 A: Our other brands are much smaller today, and they have been declining for many years.

- 20 • Kent, on the market since 1952, has three line extensions in two taste segments,
21 lights and ultra-lights. Those line extensions are Kent, Kent Golden Lights and
22 Kent III. Kent's market share has dropped every year since 1979.
- 23 • Old Gold, with Full Flavor Filter, Lights, Ultra-Lights, and Non-Filter, has been
24 available since before the filter era, and has been in general decline since the late
25 1950s.

- True is an ultra low-tar brand. It was introduced in 1966 and has fallen since 1979. It has both a regular and menthol version.

- Maverick, with full flavor and lights versions, is a more recent brand. It was introduced in 1996 as the successor to Harley-Davidson, which was dropped at that time. Maverick peaked in 1999 and has declined since.

Q: Do the brands other than Newport currently receive any marketing support?

A: Old Gold and Maverick get some retail support such as price discounting and point-of-sale. No Lorillard brand other than Newport receives media advertising or direct mail support.

III. OVERVIEW OF TESTIMONY

Q: Mr. Lindsley, do you plan to offer testimony concerning allegations made by the Government in this case pertaining to whether Lorillard markets to underage individuals and non-smokers?

A: Yes.

Q: Are there legal, regulatory, and internal standards that govern how and to whom Lorillard markets its cigarettes?

A: Yes.

Q: What are they?

A: These standards include the following:

- FTC Cigarette Advertising Guides. (U.S. Ex. 61239.)

- The industry's 1965 Cigarette Advertising Code. (JD-080032.)

- The industry's Code of Cigarette Sampling Practices of 1981. (JD-060906.)

- The industry's Cigarette Advertising and Promotion Code of 1990. (JE- 20344.)

- MSA (U.S. Ex. 64359.)

- Lorillard's Corporate Principles On Marketing, Promotion and Youth Smoking of 1999. (U.S. Ex. 55455.)

- 1 • Lorillard's Corporate Principles On Marketing, Promotion and Youth Smoking of
2 2003. (JD-025068.)
- 3 • Lorillard's policies regarding magazine advertisement placement. (*E.g.*, JE-022143.)
- 4 • Lorillard's Corporate Principles On Marketing, Promotion and Youth Smoking of
5 2005. (JD-25152.)

6 In addition, since I have been with the company, the requirements of the various standards
7 have been incorporated in our written marketing procedures. This written manual has had
8 various names; today it is called the Lorillard Marketing Regulation Manual. JE-067506. In
9 2000, Lorillard supplemented that manual with the Lorillard Promotion Marketing Manual,
10 JD-020592, to cover requirements applicable to promotion marketing.

11 Q: During your time with Lorillard, has Lorillard complied with these standards in the
12 marketing of its cigarettes?

13 A: To my knowledge, yes, we have.

14 Q: Are there additional standards to which Lorillard must comply?

15 A: Yes. In addition to these standards, Lorillard must also comply with a large variety of
16 state and local laws and regulations pertaining to matters like sampling, contests, price
17 promotions, and advertising.

18 Q: When you started with Lorillard in 1981, what was its policy regarding magazine
19 placement of cigarette advertising?

20 A: We followed the Cigarette Advertising Code, which prohibited advertising in
21 publications "directed primarily to persons under twenty-one years of age." (JD-080032 at
22 0657.)

23 Q: Was that requirement changed by the MSA?

24 A: No.

25 Q: Has Lorillard's magazine placement policy changed since the MSA?

1 A: Yes. In 2001, we decided not to advertise in any magazine with a youth readership (ages
2 12-17) over 18%, as measured either by Simmons Market Research Bureau or MRI. As of the
3 beginning of this year, Lorillard restricted its magazine advertising further. We now advertise
4 only in magazines with less than 15% or 2 million youth readers, whether or not they are
5 measured by Simmons or MRI. Magazines that are not measured by Simmons or MRI must
6 show us a full demographic profile indicating that they meet the same criteria. I will describe
7 these restrictions further when I discuss our magazine advertising.

8 Q: How does Lorillard make sure that all appropriate personnel know its marketing
9 standards and follow them?

10 A: One way is that, for as long as I have been with the company, Lorillard has issued the
11 Lorillard Marketing Regulation Manual and its predecessors to all people involved in developing
12 and executing marketing plans, including the outside agency responsible for Newport
13 advertising. They are distributed to appropriate personnel with instructions to abide by them.
14 There have been other communications of these standards as well.

15 Q: Referring you to JD-020675, can you identify that?

16 A: Yes. That is a letter from 1991 in which Andrew Tisch, then Lorillard's Chief Executive
17 Officer, sent the new Cigarette Advertising and Promotion Code to Lorillard's officers, nearly 50
18 employees of five departments, our entire sales force and our three outside advertising agencies.
19 Mr. Tisch said: "Your obligation is to assure that everyone, who is in any way engaged in
20 advancing the Lorillard marketing effort, is familiar with and adheres to its intent and its spirit."

21 Q: Were you one of the recipients of Mr. Tisch's letter?

22 A: Yes, I was.

23 Q: Q: What are the Lorillard Corporate Principles?

1 A: A: In 1999, Lorillard combined the principles of the voluntary Cigarette Advertising
2 and Promotion Code and provisions pertaining to marketing practices of the Master Settlement
3 Agreement to form its Corporate Principles On Marketing, Promotion and Youth Smoking.
4 Q: Have Lorillard's Corporate Principles been provided to Lorillard's employees?
5 A: Yes. The Corporate Principles have been published in our internal magazine *The*
6 *Informer*, and also provided to employees in a pamphlet version. In addition, they are included
7 in the new-hire packet provided to new employees.
8 Q: Referring you to JD-020586, JE-025844, and JD-025153, can you identify them?
9 A: Yes, those are the copies of *The Informer* that contained the 1999, 2003 and 2005
10 Corporate Principles. Each of them also contained a letter to all employees from our CEO,
11 Martin Orlowsky, describing how important the company considers them.
12 Q: Referring you to JD-025152, what is that?
13 A: It is the pamphlet version of the 2005 Corporate Principles that was distributed to all
14 Lorillard employees.
15 Q: Referring you to JD-024501, what is that?
16 A: It is a copy of the new-hire packet we gave to all new employees in 2004, containing the
17 Corporate Principles. The current new-hire packet contains the 2005 Corporate Principles.
18 Q: Referring you to JD-020593, can you identify that?
19 A: It is an e-mail from Randy Spell, Executive Vice President of Marketing and Sales, in
20 2003 to the five department heads who report to him to make sure that every employee in their
21 departments "got [the Corporate Principles booklet], has had an opportunity to read it, and [has]
22 an understanding of its content." JD-020593. Mr. Spell made it clear that the employees needed
23 to "understand and abide by" the Principles. "The more people that understand and insure

1 compliance,” he wrote, “the better we can all do at upholding these policies, procedures and
2 principles.” Mr. Spell sent a similar letter regarding the 2005 Corporate Principles.

3 Q: The Government claims that Lorillard advertises and promotes Newport in an
4 attempt to obtain replacement smokers, meaning nonsmokers who replace smokers who
5 either quit or die. Does Lorillard do that?

6 A: No.

7 Q: Why then do you advertise and promote Newport?

8 A: We advertise and promote Newport for three reasons: To maintain the loyalty of
9 Newport smokers (*i.e.*, “franchise smokers”), to get people who smoke other brands (*i.e.*,
10 “competitive smokers”) to try Newport and switch to it, and to increase our share of the
11 purchases of adult smokers who have a Lorillard brand as part of their occasional brand
12 purchases.

13 Q: What efforts do you make to limit the reach of your advertising to adults?

14 A: I will answer this more fully later when I explain our marketing process, but, briefly, we
15 don’t target kids, we follow all the standards that I have mentioned, we use adult imagery in our
16 ads, and we seek to limit our direct mail program to smokers who are at least 21.

17 Q: Isn’t it still possible that your ads will reach some people under the age of 18?

18 A: Of course. We can’t keep all kids from seeing our ads, just as we can’t keep them from
19 seeing cigarettes or people smoking cigarettes. So long as cigarettes are a legal product and we
20 have the right to advertise them to adult consumers, kids will be aware of smoking and there will
21 be some spillover of our advertising messages to them. But, as I have already stated and as I will
22 explain more fully later, we have imposed a long list of restrictions to focus our marketing
23 efforts on our intended audience, adult smokers, and to limit their exposure to kids.

1 Q: Has the FTC ever taken any action against Newport's advertising or marketing?

2 A: Not to my knowledge.

3 Q: Since you signed the MSA, has NAAG or the attorney general of any state instituted
4 an enforcement action against Lorillard for violation or alleged violation of the MSA?

5 A: Not to my knowledge.

6 Q: Have you ever met with or communicated with any of your counterparts at the
7 other tobacco companies?

8 A: No.

9 Q: Do you know who any of them are?

10 A: No.

11 Q: To your knowledge, do any Lorillard employees communicate with other tobacco
12 companies regarding your cigarette marketing?

13 A: Not to my knowledge.

14 IV. THE GOVERNMENT'S EXPERTS ARE WRONG ABOUT LORILLARD'S
15 BRAND PLANS

16 Q: Mr. Lindsley, Drs. Dolan and Krugman relied on some Lorillard's planning
17 documents to support their opinions that Lorillard markets to youth. Do the Newport
18 Brand Plans reflect an intention to market to youth?

19 A: No. In fact, they show the opposite, that our marketing focus is adult smokers.

20 Q: I will ask you to explain in a moment, but first please tell the Court your role in the
21 preparation of Lorillard's Brand Plans?

22 A: My responsibilities as Senior Group Brand Director are to coordinate and supervise the
23 preparation, execution and evaluation of the annual Newport Brand Plan.

24 Q: Would you briefly describe the Newport Brand Plan?

1 A: It is our annual marketing roadmap. It describes the “state of the brand” and sets out the
2 marketing objectives and strategies for the year. The Brand Plan has two parts, the Strategic
3 Plan and the Tactical Plan. In addition, some Brand Plans may be supported by separate media,
4 promotional or direct-marketing plans that describe more detailed executional elements.

5 Q: For how long have you been involved with the Newport Brand Plan?

6 A: When I started at Lorillard 24 years ago, I was responsible for executing one portion of
7 the Newport Brand Plan. Since then, except for three years in the late 1980’s, I have been
8 continually involved with Newport’s Brand Plan. My responsibilities have included involvement
9 in every aspect of the Brand Plan, and since I became Group Brand Director in 1990, I have
10 overseen and supervised its development, preparation, execution, evaluation and modification.

11 Q: What is the role of the Brand Plan in marketing Newport?

12 A: As I said, it is our marketing roadmap. It includes our goals for the brand, our strategies
13 to reach those goals, and the executional elements to carry out those strategies. We continually
14 review it and revise it throughout the year based on changing circumstances. The Brand Plan is a
15 living, breathing document, used by all of our personnel involved in marketing activities, not just
16 those in the Brand Marketing Department, but everyone who is responsible for execution of our
17 marketing strategies.

18 Q: What departments at Lorillard use the Brand Plan?

19 A: Nearly all of them, not just Brand Marketing, but also Sales General, Sales Planning,
20 Merchandising, Marketing Services, Promotions, Database Marketing, Marketing Planning and
21 Information (the research department), Product Development, Production, Legal and Finance. It
22 is also used by our outside advertising agency.

23 Q: Do the Brand Plans include Newport’s Positioning Statement?

1 A: Yes, either under this name or a different name.

2 Q: What is the Positioning Statement?

3 A: The Positioning Statement typically describes the brand's position in the category in
4 which it competes and the demographic group that will receive emphasis that year. That group
5 may or may not also be the brand's core franchise. In Newport's case, it usually is.

6 Q: Would you identify JD-021072, please?

7 A: That is the 2002 Newport Brand Plan.

8 Q: Did you prepare this Brand Plan?

9 A: I oversaw and coordinated its preparation.

10 Q: Would you read the Brand Positioning Statement in this Brand Plan?

11 A: REDACTED

12

13 Q: When you referred to smokers 21-34 years old, is that the same thing as Newport's
14 target?

15 A: No. Newport's target is menthol smokers age 21 and over. Many of our marketing
16 tactics, such as our direct mail program, were directed to any smoker 21 years old or older. The
17 segment we emphasized in this Brand Plan, however, was the 21-34 year-old group.

18 Q: Have 18-20 year-olds ever been included in the group to which Lorillard advertised
19 or promoted?

20 A: Yes.

21 Q: When?

22 A: Prior to the preparation of the 2000 Brand Plan which began in 1999.

1 Q: To your knowledge, during the time when 18-20 year-olds were included in the
2 group to which Lorillard advertised or promoted, did it ever publicly state that it did not
3 advertise or promote to anyone under the age of 21?

4 A: Not to my knowledge.

5 Q: Was advertising and promoting to 18-20 year-olds prior to 1999 contrary to
6 Lorillard's business standards that you mentioned earlier?

7 A: No. So long as we comply with the limitations in place regarding this age group – such
8 as the requirement in the Cigarette Advertising Code that we not place ads in publications
9 primarily directed at persons under 21 – we may market to 18-20 year-olds. But, as I mentioned
10 above, we voluntarily withdrew from actively marketing to anyone under 21, even though 18-20
11 year-olds can legally smoke in most markets.

12 Q: When did you withdraw from actively marketing to anyone under 21?

13 A: In 1999, when we began drafting the 2000 Brand Plan.

14 Q: Why did you do that?

15 A: We wanted to strengthen the buffer range between the youngest people to whom we
16 market and persons who are too young to smoke legally. By 1999, there wasn't much that we
17 were doing in that age category, and we eliminated it altogether.

18 Q: Has Lorillard ever targeted anyone under the age of 18?

19 A: No. Since I have been at Lorillard, we have not targeted anyone under 18 in any of our
20 brand marketing activities. To my knowledge, Lorillard has never done so.

21 Q: Why not?

22 A: Because we firmly believe that smoking is an adult custom and that kids under 18 should
23 not smoke cigarettes.

1 Q: Has Lorillard targeted non-smokers?

2 A: No.

3 Q: Why not?

4 A: It was Lorillard's practice not to market to non-smokers before I arrived. It would be a
5 waste of time, money, and effort to market any product to someone who has chosen not to use
6 that product. If an adult has chosen not to smoke, there is no reason for us to market to them.

7 Q: Earlier you said that you advertise and promote Newport to maintain the loyalty of
8 Newport smokers and to get competitive smokers to try Newport.

9 Are those goals reflected in your Brand Plans?

10 A: They certainly are.

11 Q: Referring again to the 2002 Newport Brand Plan, JD-021072, can you show where
12 those goals are reflected?

13 A: Yes. The 2002 Newport Brand Plan contains repeated descriptions of opportunities to
14 take business from our competitors and the importance of maintaining our own consumer base.
15 For example, it sets forth the following "key issues":

16 REDACTED
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1 Q: Did any of this involve targeting adolescents or non-smokers?

2 A: Not at all. We were trying to defend our business from our competitors, take business
3 from them, and use promotional programs to defend and grow the brand.

4 Q: Mr. Lindsley, from a practical standpoint, would it be feasible for your written
5 Brand Plan to specify a target age group of people over the age of 18 or 21, or to describe
6 strategies related to franchise and competitive adult smokers, while you were actually
7 intending to target nonsmokers or underage individuals?

8 A: No. The Brand Plan contains every marketing strategy and tactic for the brand. As I
9 mentioned, it is used by many, many people in our company, as well as by our outside
10 advertising agency. We couldn't possibly have one set of strategies and tactics in the Brand Plan
11 and another unwritten one that we somehow conveyed to hundreds of employees and
12 consultants.

13 Q: Dr. Krugman testified that a reference to the age group of 18-24 year-olds in the
14 1994 Newport Brand Review, U.S. Ex. 74,442, violated the 1965 Cigarette Advertising Code
15 because it included individuals under 21. (Krugman written direct, 177:7-178:3.)

16 Do you agree?

17 A: No. The Code did not prohibit the inclusion of 18-20 year-olds in a brand's target group.
18 It did contain certain age-related restrictions on media advertising, such as not advertising in
19 magazines "primarily directed to" persons under 21.

20 Q: Directing your attention to U.S. Ex. 21,113 at 5051, is that the media plan for 1994?

21 A: Yes, it is.

22 Q: Does the media plan describe the target audience, the age group that received
23 primary emphasis for Newport's media strategy?

1 A: Yes, it does.

2 Q: Would you tell the Court what that age group was during that year for your media
3 activities?

4 A: It was 21-34 year-olds, but not 18-20 year olds.

5 Q: Dr. Dolan testified that the Brand Positioning Statement in a 1992 document, U.S.
6 Ex. 22,352, targeted underage individuals because it described Newport as “[t]he leading
7 entry level, full flavor cigarette brand in the freshness segment” and because the document
8 recommended incentives aimed at “entry-level and competitive users.” He testified that
9 Lorillard understood that “‘entry’ people were predominantly teenagers.” (Dolan written
10 direct at 73:19-74:11.)

11 Do you agree?

12 A: No.

13 Q: What was this document and what was your role in it?

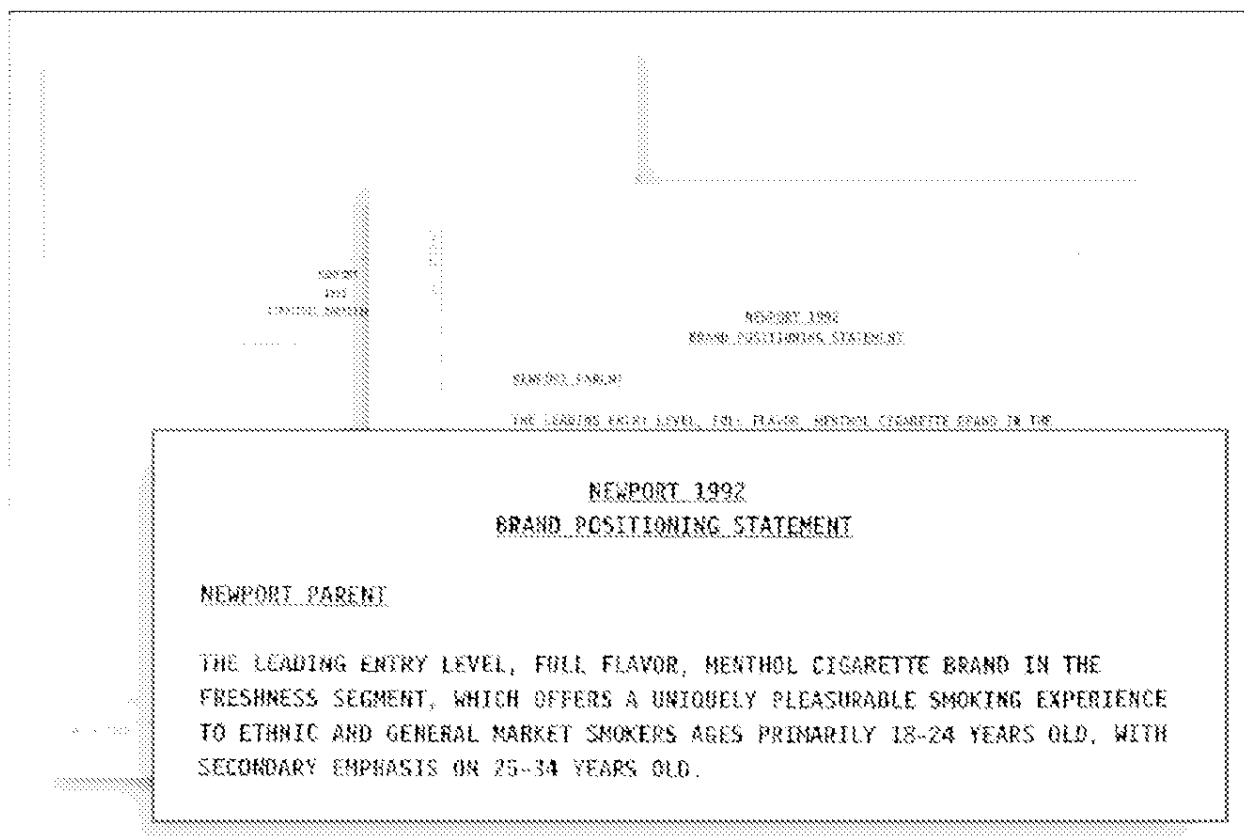
14 A: This was the 1992 Newport Strategic Marketing Plan. I coordinated its preparation.

15 Q: Why do you disagree with Dr. Dolan’s interpretation.

16 A: What we meant by “entry level smokers” is an adult who has chosen to smoke but has
17 never smoked a menthol before. In fact, Lorillard has generated sales among Marlboro non-
18 menthol smokers who switched to Newport menthol. They are entry level smokers to us.
19 Moreover, Dr. Dolan only partially quoted the Brand Positioning Statement and left out the
20 relevant age ranges. The Brand Positioning Statement stated in full: “The leading entry level,
21 full flavor, menthol cigarette brand in the freshness segment, which offers a uniquely pleasurable
22 smoking experience to ethnic and general market smokers ages primarily 18-24 years old, with

1 secondary emphasis on 25-34 years old.” U.S. Ex. 22,352 at 92011125. As the document
2 indicates, we were talking about legal age smokers.

3 Q: Is that passage reproduced below in JDEM-020182?



4 Source: US Ex. 22,352

JDEM-020182

5 A: Yes, it is.

6 Q: Dr. Dolan stated that a 1993 document entitled, “Kent Key Business Issues,” U.S.
7 Ex. 74,520, which he attributed to Brown & Williamson, “tied Kent’s ‘long term rate of
8 decline’ to ‘Product Positioning and brand image not strong enough to attract new
9 smokers.’” (Dolan written direct, 79:11-14; discussion of document continuing at 79:15-
10 18.)

11 First of all, has Kent always been a Lorillard brand?

1 A: Yes, it has.

2 Q: Is this a Lorillard document?

3 A: Yes, it is.

4 Q: Were you Group Brand Director for Kent at the time of this document in 1993?

5 A: Yes, I was.

6 Q: Were you trying to target underage individuals or non-smokers at that time?

7 A: No.

8 Q: Does this document reflect an intention to target underage individuals or non-

9 smokers with Kent?

10 A: No. This passage simply reflected Kent's position as a declining brand. Kent had an

11 older brand demographic and was not attracting competitive smokers. This document reflected

12 an effort to reposition the product so that it would be more competitive by introducing a new line

13 extension called "Kent International" to be geared younger than Kent. But even that

14 repositioning was still aimed at 25-49 year-old smokers. (8309.)

15 Q: Referring you to JD-025154 at 6460, does this document indicate the average age of

16 Kent smokers at that time?

17 A: Yes. This is our Cigarette Tracking Study Fact Book, and it indicates that in 1992 the

18 median age of Kent smokers was 54.9.

19 Q: To sum up, do any of your Brand Plans contain any strategies or tactics designed to

20 persuade nonsmokers to smoke or to attract adolescents to your brand?

21 A: They do not.

V. LORILLARD'S MARKETING VEHICLES AND WHY THEY ARE NOT
TARGETED AT YOUTH

Q: Mr. Lindsley, I now would like to discuss your marketing vehicles and why they do not target youth. What is a marketing vehicle?

A: It is a tool or marketing activity we use to market our products.

Q: What are the marketing vehicles that Lorillard uses for Newport?

A: Currently, we use advertising, price promotions, a direct marketing program, a continuity program, and the cigarette pack itself. In the past, we used other methods, such as sampling, branded premium items and, to a very limited extent, sponsorships.

Q: What about market research; is it a marketing vehicle?

A: That is not a marketing vehicle, but we do engage in market research among adult smokers, age 21 and over.

A. Advertising

Q: Let's start with advertising. How do you advertise Newport today?

A: We use magazines, direct mail, retail stores that sell cigarettes, and sometimes the product package.

1. Content of Newport advertising

(a) Creation of the ads in compliance with the Code

Q: Let's talk about the content of Newport advertising. What do you consider when you develop your advertisements?

A: First, we consider the segment of the Newport market that we choose to emphasize in our advertising. In recent years that has generally been 21-34 year-old menthol smokers. Next we consider the imagery, the message and the media to communicate to that audience.

Q: Would you briefly describe Newport's advertising image and message?

1 A: Newport's imagery and message have been consistent for more than 30 years. Newport
2 ads portray adults having fun with each other in spontaneous and lifestyle-relevant situations.
3 The ads also use a signature green background with Dayglo orange type.

4 Q: How are your advertisements generated?

5 A: We ask our advertising agency to develop ideas for the ads, using the relevant regulations
6 and guidelines, as well as the current brand plan. Our Brand Marketing Department reviews
7 those ideas, and the agency then conducts a photo shoot for the ideas we have approved. After
8 the photo shoot is conducted, the outcome is presented to Lorillard's senior management for
9 approval. The ad does not proceed to production until representatives of the advertising agency,
10 the Brand Marketing Department, senior management and the Legal Department have all signed
11 off on the ad's "mechanical."

12 Q: What is a mechanical?

13 A: A scaled version of the approved ad, with all the specifications for production.

14 Q: Referring you to JDEM-020185, which has been copied on the next page, what is
15 this?



LORILLARD APPROVALS		
	REVIEWED BY	DATE
PRODUCT MGR	[Signature]	1/19/98
GRP PROD MGR	[Signature]	1/19/98
LEGAL	[Signature]	1/19/98
V.P. ADVTG.	[Signature]	1/19/98

1

Soc 1/19/98

JDEM-020195

2 A: This is a mechanical for a Newport ad called "Inner Tube Dive" that we approved in
 3 1998, except that the original was in color. It contains initials of the agency's representatives on
 4 the lower left, certifying that the ad is fully compliant with our standards. It also contains
 5 signatures by Lorillard personnel in the lower right-hand corner, indicating that we had approved
 6 it for production. Although you may not be able to tell from this copy, my initials "VL" are on
 7 the second line.

8 Q: What other Lorillard signatures are contained on the mechanical.

9 A: They appear to be the initials of Judy Young, brand manager; Kurt Fauerback, assistant
 10 brand manager; Jim Cherry of the legal department; and George Telford, vice-president of
 11 advertising.

1 Q: What type of advertisement was this?

2 A: A magazine ad.

3 Q: Is there a similar approval process for point-of-sale ads and direct mail materials?

4 A: Yes.

5 Q: How if at all is the Cigarette Advertising and Promotion Code considered when you

6 evaluate the ads?

7 A: That is the most important consideration in evaluating the proposed ad for everyone

8 involved, both at Lorillard and at the agency. If the ad doesn't comply with the Code, it doesn't

9 run.

10 Q: Does the Ad Code say anything about how old models must be?

11 A: Yes. The models in the ad must be, and appear to be, 25 years old or older.

12 Q: How do you assure that you comply with this provision?

13 A: The agency obtains a copy of a government-issued ID from every model it uses. It also

14 sends us "head shots" (i.e., photographs) of the models. If any member of our brand marketing

15 team thinks a model looks too young, we won't use them. That doesn't happen often because the

16 agency is well aware of the restrictions.

17 Q: Government experts relied on a study in which people were asked to judge the ages

18 of models in various magazine ads that ran in October 1987. Mazis, "Perceived Age and

19 Attractiveness of Models in Cigarette Advertisements," U.S. Ex. 64,268. According to that

20 article, the respondents on average judged the age of the female model in one of the

21 Lorillard ads examined in the study to be 24.5.

22 Referring you to JDEM-020169, which is a copy of a Newport Lights ad from the

23 October 8, 1987 Rolling Stone, do you recognize that ad?

- 1 A: Yes. We called it "Car Wash."
- 2 Q: Did you have a role in the creation of that ad?
- 3 A: Yes. I was Newport Brand Manager at the time.
- 4 Q: Is the ad copied below?
- 5 A: Yes, it is.
- 6



- 7
- 8 Q: Did you believe the female model appeared to be under 25?

JDEM-020169

1 A: Not at all. I believed, and still do, that she clearly appeared to be at least 25. So,
2 apparently, did everyone at the advertising agency and at Lorillard who reviewed the ad. If we
3 had thought otherwise, we would have replaced her.

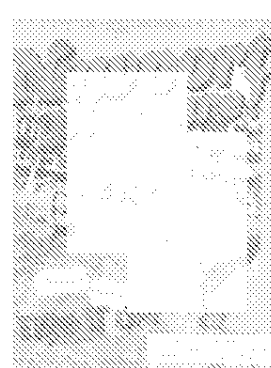
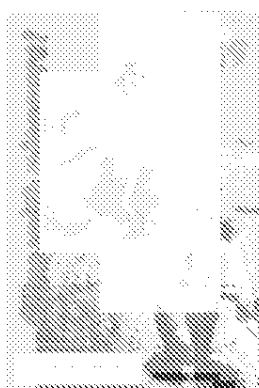
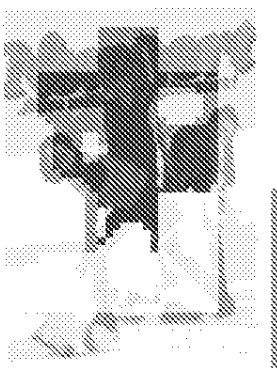
4 Q: Dr. Biglan complained about sports activities in your ads. He depicted a few of your
5 ads and stated, "Lorillard has clearly not felt constrained by the Code from associating
6 diverse athletic activities and all of the healthful and fun attributes of those activities with
7 smoking Newport." (Biglan written direct, 231:5-7; advertisements appearing at 229-230).

8 Did you feel constrained by the Code in running those ads?

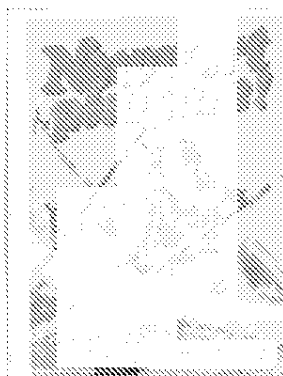
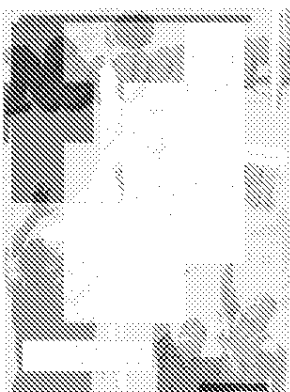
9 A: We felt constrained by the Code in that the Code places restrictions on us and we follow
10 those restrictions. But our ads don't violate the Code. We are not constrained from showing
11 healthy people in our advertising. The Code bars the depiction of smokers "participating in, or
12 obviously having just participated in, physical activity requiring stamina or athletic conditioning
13 beyond that of normal recreation." (U.S. Exhibit 21,228 at 8611; U.S. Exhibit 20,519 at 7700.)
14 Our ads show recreational sports. They don't show competitive athletics that require physical
15 conditioning beyond normal recreation.

16 Q: Would you look at the ads copied on the next few pages as JDEM-020170. They
17 include the ads depicted in Dr. Biglan's testimony that ran during your time at Lorillard,
18 as well as other ads that ran during that time. Would you describe them?

19 A: They are examples of Newport ads since 1981 that show people engaged in recreational
20 sports. The ads all show ordinary people having fun with each other while engaged in recreation.
21 They are the kind of things people do on the weekend or on vacation. Where they are engaged in
22 an organized game, there is often a twist, as in the ad with the oversized football or the one
23 where the catcher tags out the runner while she is snatching home plate out of his reach.

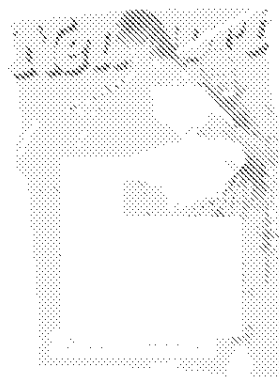
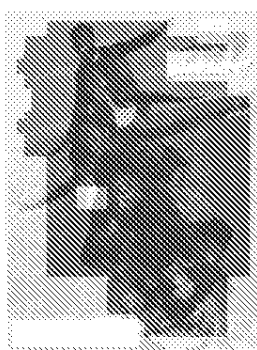
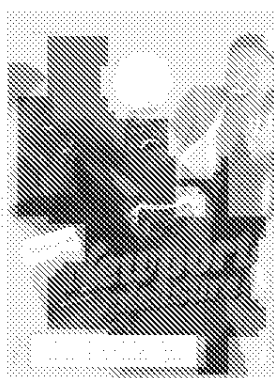
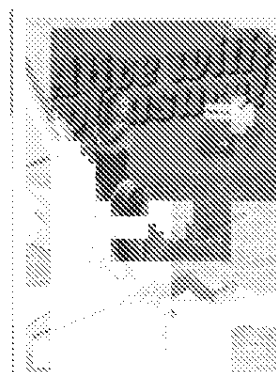
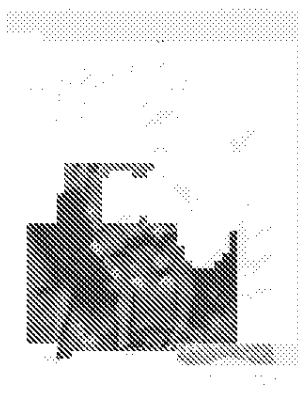


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2